

Memorandum

To: Papio-Missouri River Natural Resources District
Programs Projects and Operations Subcommittee

From: Paul W. Woodward PE, Groundwater Management Engineer

Date: July 7, 2016

Re: Review and Recommendation on the Second Amended Interlocal Agreement for the Lower Platte River Invasive Vegetation Management Program

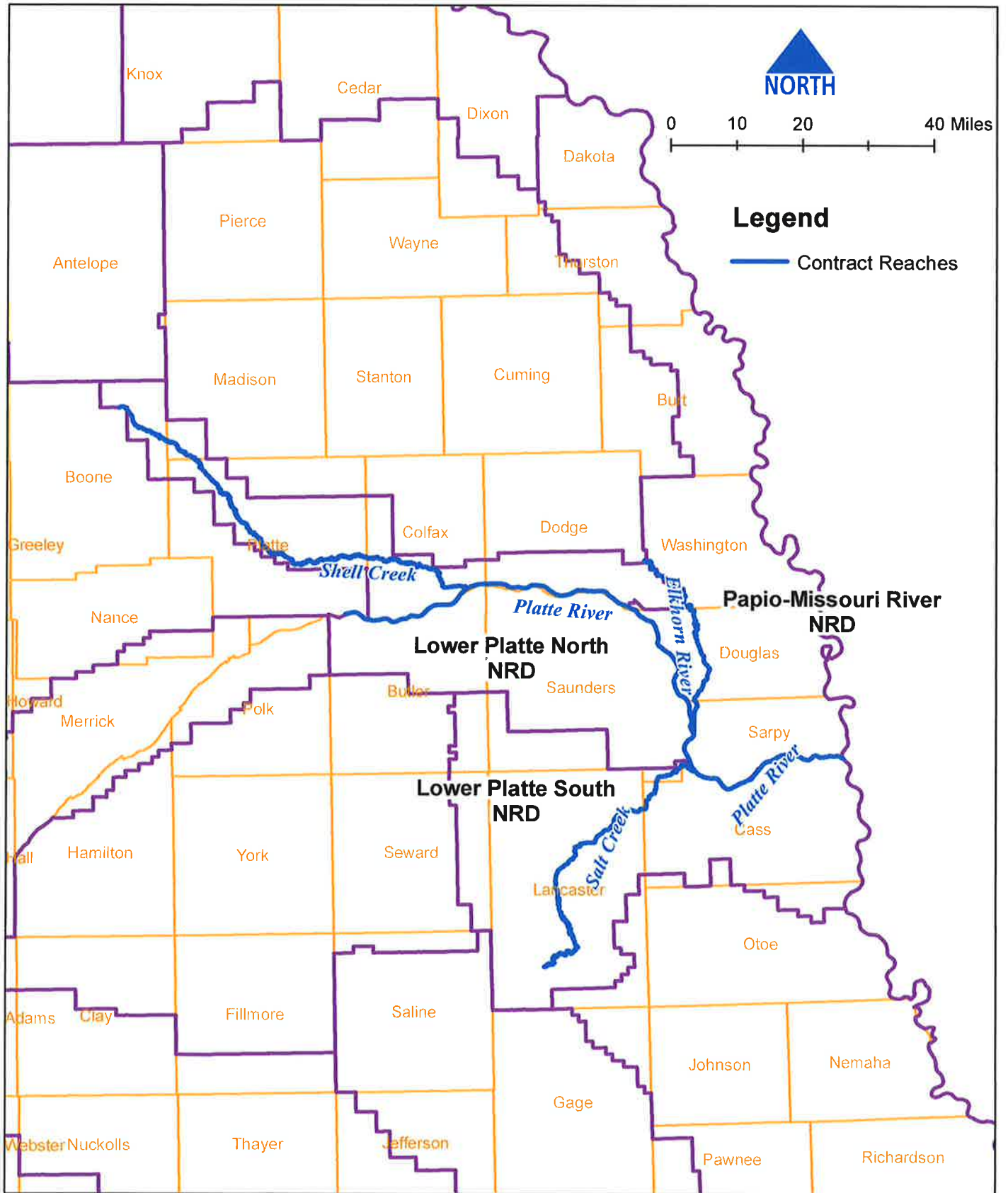
The District first entered into an Interlocal Agreement with Lower Platte South NRD and Lower Platte North NRD to fund the Lower Platte River Phragmites Management Project in September of 2009. A subsequent amended agreement was executed in 2014. The amended agreement set the annual cost share from each NRD at \$20,000, providing an annual funding of \$60,000 to complete the work needed under the agreement. This work includes ground and aerial survey each year to best identify areas of phragmites and other invasive vegetation, aerial spraying of herbicide on target areas, ground control of some affected areas by each county, and ongoing research and administration to carry out the program.

The effectiveness of this program has been clearly seen in the overall reduction of areas of phragmites that have to be sprayed every year. At the same time, the annual spraying has also helped control other noxious weeds and some invasive woody vegetation. So, today and into the future, there continues to be a constant need to keep phragmites at bay while increasing our control of invasive vegetation such as willows and cottonwoods which as they develop can turn sandbars into permanent islands in the river. This overgrowth of vegetation in our river channels can have the following consequences:

- Overgrowth allows other noxious weed infestations to flourish, including phragmites, and makes access to control them more difficult
- Overgrowth directly uses more water from the rivers in the form of evapotranspiration and plant growth.
- Overgrowth impedes river flow increasing flood levels and increasing the risk for ice jam formation.
- Overgrowth diminishes sandbar formation and scour, hurting threatened and endangered species habitat.
- Overgrowth crowds the river and can be a deterrent for recreational use and access.

The District recently accepted new bids for the aerial herbicide spraying, and while the bids are competitive, they did show an approximate 20% increase over the last 5 year period. This means what we once could do for \$60,000, would now cost about \$70,000. The Second Amended Interlocal Agreement attached to this memo incorporates changes to allow the spraying of willows and cottonwoods, allow the District to use mechanical means to remove invasive vegetation as necessary, and increases the annual cost share from each of the three NRDs from \$20,000 to \$30,000, providing an annual fund of \$90,000.

Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the Second Amended Interlocal Agreement with Lower Platte South NRD and Lower Platte North NRD for the Lower Platte River Invasive Vegetation Management Program, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.



LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT
LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

**SECOND AMENDED INTERLOCAL COOPERATION ACT AGREEMENT
LOWER PLATTE RIVER PHRAGMITES MANAGEMENT PROGRAM**

THIS SECOND AMENDED AGREEMENT ("THIS SECOND AMENDED AGREEMENT") supercedes and replaces the Amended Agreement that was executed on July 14, 2014, by the LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT; executed on July 21, 2014, by the LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT and executed on July 10, 2014, by the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT and the **INTERLOCAL COOPERATION ACT AGREEMENT** that was executed on September 14, 2009, by the LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT; executed on October 15, 2009, by the LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT and executed on September 20, 2009, by the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT ("**P-MRNRD**"), (referred collectively as "**the CONTRACTING NRDS**"); and,

WHEREAS, the flood channels of the lower Platte River, Elkhorn River, Shell Creek, Salt Creek and their tributaries (referred to collectively as "**the FLOOD CHANNELS**") in the COUNTIES of BUTLER, CASS, COLFAX, DODGE, DOUGLAS, LANCASTER, PLATTE, SARPY, SAUNDERS and SEWARD (referred to collectively as "**the AFFECTED COUNTIES**" and individually as an "**AFFECTED COUNTY**") have become infested by *Phragmites australis* (hereinafter referred to as "**PHRAGMITES**"), as well as other noxious weeds and invasive vegetation including but not limited to willows and cottonwoods (referred to collectively as the "**TARGET VEGETATION**"), that tends to bond with winter ice formations and impede the natural breakup and discharge of broken ice floes from the FLOOD CHANNELS, aggravating spring flooding; and,

WHEREAS, Neb. Rev. Stat. § 2-3229, authorizes natural resources districts to "develop and execute. . . plans, facilities, works, and programs relating to . . . (2) prevention of damages from flood water and sediment, (3) flood prevention and control, . . . [and] (6) development, management, utilization, and conservation of ground water and

surface water. . . ; [and] 10) development and management of fish and wildlife habitat"; and,

WHEREAS, Neb. Rev. Stat. § 2-3235, among other things, authorizes the CONTRACTING NRDS to cooperate with or to enter into agreements with and, within the limits of appropriations available, to furnish financial or other aid to any cooperator, any agency, governmental or otherwise, or any owner or occupier of lands within the district for the carrying out of projects for benefit of the district as authorized by law, subject to such conditions as their boards of directors may deem necessary; and,

WHEREAS, the CONTRACTING NRDS hereby determine that it will be to the general public benefit, with only an incidental special benefit, to institute a program (hereinafter referred to as "the **PROGRAM**") to assist the AFFECTED COUNTIES and their weed control authorities to carry out an intensive, efficient and economical program for control of the TARGET VEGETATION in the FLOOD CHANNELS of the CONTRACTING NRDS; and,

WHEREAS, THIS AMENDED AGREEMENT is made pursuant to authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1943, et seq.), without any separate legal entity being created, to conduct the joint and cooperative undertaking contemplated herein, and, whenever possible, THIS AMENDED AGREEMENT shall be construed in conformity with such Act.

NOW, THEREFORE, in consideration of their mutual covenant hereinafter expressed, the CONTRACTING NRDS agree as follows:

Program Plan: The CONTRACTING NRDS do hereby adopt the following plan for administering the PROGRAM:

- a) Aerial Survey: On or about the 1st day of July of each year during the term of THIS AMENDED AGREEMENT, the P-MRNRD shall retain one or more qualified contractors to perform an aerial survey of the TARGET VEGETATION in the AFFECTED COUNTIES ("the **AERIAL SURVEY**") The AERIAL SURVEY shall be performed during the month of July in such year and shall be designed to determine and plot on appropriate maps, using GPS technology, the areas of serious infestations of TARGET VEGETATION in the

FLOOD CHANNELS in the AFFECTED COUNTIES. Upon its receipt of the reports of the AERIAL SURVEY the P-MRNRD shall submit copies thereof to the CONTRACTING NRDS for their approvals, following which such reports shall be transmitted by the P-MRNRD to the County Boards of the AFFECTED COUNTIES, along with notice of the amounts budgeted by the CONTRACTING NRDS for cost assistance for the PROGRAM.

b) County designation: Each year, after an AFFECTED COUNTY has received from the P-MRNRD the report of the AERIAL SURVEY showing infestations of TARGET VEGETATION in the FLOOD CHANNELS in such county, along with notification to such AFFECTED COUNTY of the amount budgeted by the CONTRACTING NRDS for cost subsidization for control of TARGET VEGETATION in such county, an AFFECTED COUNTY desiring PROGRAM assistance shall provide to the P-MRNRD a designation of the FLOOD CHANNELS within such AFFECTED COUNTY that the COUNTY determines should receive an AERIAL APPLICATION of herbicide or receive mechanical removal of TARGET VEGETATION ("MECHANICAL REMOVAL").

c) Aerial Application and Mechanical Removal: Upon receipt of such designations, and using written plans and specifications and other contract documents prepared by the P-MRNRD (collectively, the "**CONTRACT DOCUMENTS**"), the P-MRNRD shall i) advertise for sealed bids for a contractor (the "**PROGRAM APPLICATOR**") to provide helicopter application (the "**AERIAL APPLICATION**") of the herbicide designated by the trade name of "Habitat" upon TARGET VEGETATION on lands in the FLOOD CHANNELS within the respective AFFECTED COUNTIES that CONTRACTING NRDS have approved for the AERIAL APPLICATION or ii) advertise for sealed bids for a contractor (the "**PROGRAM MECHANICAL CONTRACTOR**") to provide mechanical removal of TARGET VEGETATION in the FLOOD CHANNELS within the AFFECTED COUNTIES that CONTRACTING NRDS have approved for mechanical clearing.

d) Bid Awards: The P-MRNRD shall open and tabulate such bids and determine the lowest responsive bid; and communicate such determination to the other CONTRACTING NRDS for their approvals, which shall not be

unreasonably delayed or withheld. After receipt of such approvals, the P-MRNRD shall execute a contract with such lowest responsive bidder for performance of the AERIAL APPLICATIONS on the MECHANICAL REMOVAL in accordance with the CONTRACT DUCUMENTS, and shall administer such contract to conclusion and final acceptance.

County repayment. Each year, on or before December 31, each AFFECTED COUNTY shall be billed for repayment to the P-MRNRD for AERIAL APPLICATIONS performed by the PROGRAM APPLICATOR in such AFFECTED COUNTY as follows, to-wit:

a) **Subsidized repayment:** 50% of the cost to the CONTRACTING NRDS of the PROGRAM APPLICATOR'S services for those AERIAL APPLICATIONS performed on those FLOOD CHANNELS in such AFFECTED COUNTY where all of the following conditions exist: (1) such FLOOD CHANNELS had been designated by the P-MRNRD on an AERIAL SURVEY as containing infestations of TARGET VEGETATION consisting of PHRAGMITES or other noxious weeds; (2) the owner of such lands in such FLOOD CHANNELS has executed a release in writing consenting to a voluntary AERIAL APPLICATION and (3) the owner of such lands in such FLOOD CHANNEL has subscribed to the PROGRAM and thereby agreed to pay one-half (50%) of the estimated direct costs to the CONTRACTING NRDS of such AERIAL APPLICATION; provided, however, such PROGRAM subsidy shall be applicable to lands shown on the AERIAL SURVEY only to the extent of the afore-described budget by the CONTRACTING NRDS for cost subsidization for such county.

b) **Non-subsidized payment:** 100% of the fees of the PROGRAM APPLICATOR for AERIAL APPLICATIONS on other FLOOD CHANNEL lands in such AFFECTED COUNTY.

ROW RELEASES. Each of the AFFECTED COUNTIES shall search the records of such county for the purpose of determining the ownership of the lands designated by such county for AERIAL APPLICATION and, using such ownership information and forms for releases approved by the CONTRACTING NRDS, such AFFECTED COUNTY shall obtain releases (the "**ROW RELEASES**") over rights-of-way

necessary to authorize the AERIAL APPLICATIONS to be performed under THIS AMENDED AGREEMENT; and, in a timely manner, shall deliver such executed ROW RELEASES to the P-MRNRD.

Contributions: Contributions, fines, assessments, and other PROGRAM payments received by one of the AFFECTED COUNTIES from an owner of TARGET VEGETATION-infested FLOOD CHANNELS within such AFFECTED COUNTY, may be applied by such AFFECTED COUNTY towards such AFFECTED COUNTY'S cost repayments computed in accordance with THIS SECOND AMENDED AGREEMENT.

Cost Sharing: The CONTRACTING NRDS do hereby adopt the following plan for paying and reimbursing the costs of the PROGRAM:

a) The total actual costs incurred by the P-MRNRD and its contractors for preparation of PLANS AND SPECIFICATIONS for the PROJECT, for delineating the FLOOD CHANNELS infested with TARGET VEGETATION, for preparing forms for ROW RELEASES, for administering the PROGRAM CONTRACT, for compensating the AERIAL APPLICATOR, and such other actual and reasonable costs incurred by the P-MRNRD to advance the PROGRAM (collectively, the "**SHARED PROGRAM COSTS**"), shall be equally shared by the CONTRACTING NRDS and reimbursed to the P-MRNRD from a cash fund (the "**PHRAGMITES FUND**"), to be maintained by the P-MRNRD, and funded and expended in accordance with THIS AMENDED AGREEMENT.

b) On or before the first day of September of each year during the term of THIS SECOND AMENDED AGREEMENT the CONTRACTING NRDS shall make equal contributions to the PHRAGMITES FUND in the following amounts, to-wit:

Lower Platte North Natural Resources District,	\$30,000
Lower Platte South Natural Resources District,	\$30,000
Papio-Missouri River Natural Resources District,	\$30,000
Total	\$90,000

Provided, however, if at any time the uncommitted balance in the PHRAGMITES FUND is less than \$90,000, then, within 30 days after notice thereof from the P-MRNRD, the

CONTRACTING NRDS each shall contribute to the PHRAGMITES FUND such equal amounts as may be required to restore the uncommitted balance in the PHRAGMITES FUND to \$90,000. As used in THIS AMENDED AGREEMENT, the term "actual costs" shall include but shall not be limited to insurance premiums, increases or surcharges, and other ordinary and reasonable costs and expenses, which P-MRNRD is required to pay or assume as a result of duties undertaken by P-MRNRD pursuant to THIS AMENDED AGREEMENT.

Indemnifications. Each of the CONTRACTING NRDS agrees to indemnify and hold harmless the other CONTRACTING NRDS from and against any and all claims, demands and causes of action for damages to the person or property of third persons arising out of the comparative negligence of the indemnifying party in its performance of any of the covenants of THIS SECOND AMENDED AGREEMENT, or failure of an AFFECTED COUNTY in such NRD to obtain sufficient ROW RELEASES over land that such AFFECTED COUNTY designates for AERIAL APPLICATIONS.

Effective Date of Agreement: THIS SECOND AMENDED AGREEMENT shall become effective upon execution by all CONTRACTING NRDS.

Duration of Agreement: THIS SECOND AMENDED AGREEMENT shall have permanent duration, unless or until terminated by any of the CONTRACTING NRDS as provided herein.

Termination. Upon accomplishment of the aforesaid purposes of the PROJECT, THIS SECOND AMENDED AGREEMENT may be terminated by any of the CONTRACTING NRDS upon 90 days notice to the other CONTRACTING NRDS. Such termination shall not affect any rights of reimbursement under THIS AMENDED AGREEMENT for actions taken or responsibilities assumed by another of the CONTRACTING NRDS pursuant to THIS SECOND AMENDED AGREEMENT.

Disposal of Property: Upon termination of THIS SECOND AMENDED AGREEMENT, any marketable property remaining in the hands of any of the CONTRACTING NRDS, that was acquired by the application of shared funds contributed by the CONTRACTING NRDS, shall be sold at public sale and the proceeds thereof distributed to the CONTRACTING NRDS in the proportions provided by THIS

SECOND AMENDED AGREEMENT for their contributions towards the SHARED PROGRAM COSTS.

Administrator: Except as may be otherwise provided herein, the General Manager of the P-MRNRD shall be the administrator of the PROGRAM, on behalf and subject to the direction of the Board of Directors of the P-MRNRD.

IN WITNESS WHEREOF,

THIS SECOND AMENDED AGREEMENT is executed by the Lower Platte North Natural Resources District on this ____ day of _____, 2016 pursuant to resolution duly adopted by its Board of Directors.

**LOWER PLATTE NORTH NATURAL
RESOURCES DISTRICT**

By _____
General Manager

THIS SECOND AMENDED AGREEMENT is executed by the Lower Platte South Natural Resources District on this ____ day of _____, 2016 pursuant to resolution duly adopted by its Board of Directors.

**LOWER PLATTE SOUTH NATURAL
RESOURCES DISTRICT**

By _____
General Manager

THIS SECOND AMENDED AGREEMENT is executed by the Papio-Missouri River Natural Resources District on this ____ day of _____, 2016 pursuant to resolution duly adopted by its Board of Directors.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
General Manager